

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:18-00103

DERRICK CLARK

MEMORANDUM OPINION AND ORDER

Trial of this action is currently scheduled for January 26, 2021. However, on March 13, 2020, the President of the United States declared a national emergency under the National Emergencies Act, 50 U.S.C. § 1601 et seq., in light of the COVID-19 pandemic. The impact of the pandemic is well-documented and, in order to lessen the spread of the disease, a number of measures have been instituted in this court over time, including the delay of certain criminal matters. See General Order and General Order # 3 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. March 13, 2020 and March 23, 2020) (Johnston, C.J.). On April 14, 2020, the earlier delay of in-person criminal proceedings was extended through May 31, 2020. See General Order # 5 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. April 14, 2020) (Johnston, C.J.) (ordering all civil and criminal petit jury

selections and trials scheduled to commence from the date of the order through May 31, 2020 continued until further order of the court and that the time period of continuances implemented by the order be excluded under the Speedy Trial Act). On May 22, 2020, civil and criminal petit jury selections and trials scheduled to commence from the date of the order through June 30, 2020 were continued until further order of the court. See General Order # 6 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. May 22, 2020) (Johnston, C.J.).

On June 25, 2020, an order was entered allowing for the resumption of jury trials effective July 1, 2020. See General Order # 7 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. June 25, 2020) (Johnston, C.J.). However, on September 18, 2020, due to the increased presence of COVID-19 in the community, all civil and criminal petit jury selections and trials were once again continued until further order of the court. See General Order # 9 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. September 18, 2020) (Johnston, C.J.). In so doing, the court found that "with regard to criminal trials, due to the Court's reduced ability to obtain an adequate spectrum of petit jurors and the effect of

the above public health recommendations on the availability of counsel and Court staff to be present in the courtroom, the time period of the continuances implemented by this Order will be excluded under the Speedy Trial Act.” Id. On December 4, 2020, General Order #10 was entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. December 4, 2020) (Johnston, C.J.). General Order #10 keeps the restrictions of General Order #9 in place.

In ordering the continuance of defendant’s trial, the court finds that, due to the current danger to the public health caused by COVID-19, the ends of justice served by ordering the continuance outweigh the best interest of the defendant and the public in a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). In so finding, the court considered the factors outlined in 18 U.S.C. § 3161(h)(7)(B) and finds that a failure to order this continuance “would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.” Id. § 3161(h)(7)(B)(i).

Accordingly, the court hereby **ORDERS** as follows:

1. Trial of this action is continued until **February 23, 2021**, at 9:30 a.m. in Charleston. Jury instructions and proposed voir dire are to be filed by **February 16, 2021**.

2. Pursuant to 18 U.S.C. § 3161(h) (7) (A), the time from this Order until the trial is excludable for purposes of the Speedy Trial Act.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 13th day of January, 2021.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge